National Association of Regulatory Utility Commissioners

NARUC

NOTICE OF WRITTEN EX PARTE PRESENTATION (47 C.F.R. § 1.1204(10))

June 9, 2005

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, SW
Room TW B204
Washington, DC 20554

Re: Federal State Joint Board on Universal Service, CC Docket No. 96-45

February 10, 2005 adopted Further Notice of Proposed Rulemaking, (FCC 05-33) in the proceeding captioned: *In the Matter of Developing a Unified Intercarrier Compensation Regime* (CC Docket No. 01-92)

Revised Task Force Proposal – May 17, 2005 Version

Dear Madam Secretary:

During a meeting of the Federal-State Joint Board on Universal Service held at the Westin O'Hare Hotel in Rosemont, Illinois on June 7, 2005, the "universal service" section of the NARUC Task Force on Intercarrier Compensation (NTFIC) proposal, filed May 18, 2005 in the CC Docket No. 01-92 proceeding, was a topic of a brief discussion among the Joint Board Commissioners.[1]

[1] The meeting was attended by FCC Commissioner Kathleen Abernathy and by FCC Commissioner Michael Copps (via telephone), Commissioner Tom Dunleavy of the New York State Public Service Commission, Commissioner Robert Nelson of the Michigan Public Service Commission, Commissioner Elliott Smith of the Iowa Utilities Board, Commissioner Ray Baum of the Oregon Public Utility Commission, and Billy Jack Gregg, Director of the West Virginia Consumer Advocate Division. The following staff members also attended: Michelle Carey (FCC, Office of Chairman Martin), Jessica Rosenworcel (FCC, Office of Commissioner Copps), Lauren Belvin (FCC, Office of Commissioner Abernathy), Carl Johnson (NY PSC), Orjiakor Isiogu (Michigan PSC), Peter Bluhm (Vermont PSB), Andrew Margeson (Oregon PUC), Joel Shifman (Maine PUC), Jeff Pursley (Nebraska PSC), Greg Fogleman (Florida PSC, via telephone), Lori Kenyon (Regulatory Commission of Alaska, via telephone), Aram Shumavon (California PUC), Eric Seguin (Oklahoma Corporation Commission), Brad Ramsey (NARUC), David Dowds (Florida PSC, via telephone), Mike Lee (Montana PSC, via telephone), Philip McClelland (Pennsylvania Office of Consumer Advocate, via telephone), Earl Poucher (Florida Office of Public Counsel), Narda Jones (FCC, Telecommunications Access Policy Division (TAPD)), Ted Burmeister (FCC, TAPD), Katie King (FCC, TAPD, via telephone) and Greg Guice (FCC, TAPD, via telephone).

The Revised Task Force proposal requires, *inter alia*, some procedural changes to how federal universal service funds are distributed. A copy of the Revised Task Force Proposal is appended to this letter.[2]

If you have any questions or comments about either the Task Force Proposal or the process used to generate the proposal, please do not hesitate to contact any of the undersigned at 202.898.2207 or via e-mail at jramsay@naruc.org.

Sincerely,

James Bradford Ramsay
NARUC General Counsel

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[2] ***Important Note:*** This letter is a *written* ex parte. It is ***not*** a notice of an *oral* ex parte at the meeting. There was – nor could there be - an oral ex parte among Joint Board commissioners. In the absence of a quorum – which may trigger sunshine requirements, the deliberations/discussions among decisionmakers on the Board *about issues generally related to the matter before them* are privileged. Otherwise, the board could not function. State (and, of course, federal) members of the Joint Board are considered, for purposes of Board discussions to have “the powers conferred by law upon an examiner provided for in ..Title 5.” [A federal APA administrative law judge.] Cf. 47 U.S.C. §§ 254 & 410. The notion that ALJs discussing issues before them have to give public notice of their internal discussions about various solutions proffered in the record that they may or may not end up recommending is fatally and ratflawed on its face. ***Given the potential overlap among issues raised by the NTFIC proposal and those currently pending before the board, it was suggested the NTFIC proposal be filed directly in this docket in case the full board determined it was a topic worthy of discussion in the pending proceeding.***

Appendix A - Background

The National Association of Regulatory Utility Commissioner (NARUC), at its February 2005 meetings in Washington, D.C. passed a resolution, attached as Appendix B, that is very relevant to the deliberations to follow the FCC's recent adoption of a further rulemaking on intercarrier compensation. Over a year ago, recognizing the problems with the existing regime, NARUC created the NARUC Task Force on Intercarrier Compensation (NTFIC). On May 5, 2004, NARUC adopted, and filed in this proceeding, the NTIFC-generated intercarrier compensation policy principles, attached to this letter as Appendix D. Those principles address the design and functioning of, and prerequisites for, a new intercarrier compensation plan.

At the summer NARUC meeting in Salt Lake City, the task force sponsored a panel discussion of intercarrier compensation issues, and, in the following months, conducted several additional multi-day face-to-face meetings. At each meeting, NTIFC Commissioners met to discuss various proposed solutions to the current regime with from 20 to 40 plus stakeholders from the full range of telecommunications industries. In December, the NTFIC drafted a Task Force Proposal that created, for States that opt in, a unified state-wide scheme of intercarrier compensation. In March 2005, the Task Force Proposal was filed. At the time, we noted the proposal was still being reviewed and refined by NTFIC. The most recent iteration of the Task Forces' efforts, filed May 18, 2004 in the FCC's intercarrier compensation docket, is attached. It has been further adjusted from the version filed in March based on additional discussions among industry and State stakeholders participating in the Task Force's deliberations. It is attached to this letter as Appendix C. The Task Force proposal draws elements from several plans proposed by industry groups, but also proposes some new ideas that are well within the Commission's authority to address. The Task Force discussions of this proposal continue. It is important to point out the key elements of the NARUC resolution, which specifies as follows:

1. "The FCC [should] carefully consider the Task Force proposal as discussions continue on the Task Force proposal in an attempt to reach a still broader consensus on key issues."

2. "The intercarrier compensation reform proposal that NARUC might ultimately endorse should adhere to the policy principles adopted on May 5, 2004, to the extent possible, and should seek support among all industry, consumer, and governmental stakeholders."

Appendix B

NARUC's February 16, 2005
Resolution on the NARUC Intercarrier Compensation Task Force

WHEREAS, The Federal Communications Commission has issued a Further Notice of Proposed Rulemaking on numerous broad questions relating to intercarrier compensation; *and*

WHEREAS, A NARUC Task Force has been at work for more than a year evaluating the proposals of several industry groups and seeking consensus among those groups; *and*

WHEREAS, Pursuant to the recommendations of the Task Force, NARUC adopted a statement of policy principles for intercarrier compensation on May 5, 2004; *and*

WHEREAS, At the summer NARUC meeting in Salt Lake City, the Task Force sponsored a NARUC Meeting panel discussion of intercarrier compensation issues; *and*

WHEREAS, In the following months, the NARUC Task Force has conducted four additional multi-day meetings, in Missoula, Nashville, and Washington D.C. (twice), in each case meeting with from 20 to 40 plus stakeholders from the full range of telecommunications industries; *and*

WHEREAS, The NARUC Task Force has carefully reviewed and discussed a range of intercarrier compensation plans, including those proposed by interexchange carriers, rural local exchange companies and public advocates, as well as less formal input from the cable and wireless industries as well as individual companies; *and*

WHEREAS, The NARUC Task Force has published for comment "The Task Force" proposal for intercarrier compensation; *and*

WHEREAS, The Task Force proposal draws elements from several plans proposed by industry groups, but also proposes some new ideas; *and*

WHEREAS, The NARUC Task Force met in Washington, D.C., in January of this year with the stakeholder group of forty plus members to discuss the proposal and has reviewed and considered numerous oral and written comments from the stakeholders prior to and subsequent to the meeting in modifying the Task Force proposal; *and*

WHEREAS, The Task Force proposal would unify compensation by jurisdiction, by paying carrier, and by technology, would allow States to opt into a new national system of uniform rates, and would propose substantial reform of universal service mechanisms; *and*

WHEREAS, There are still key issues under active discussion and evaluation by the States and by NARUC, as well as by stakeholders that have participated in this process; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its February 2005 Winter Meetings in Washington, D.C., asks the FCC to carefully consider the Task Force proposal as discussions continue on the Task Force proposal in an attempt to reach a still broader consensus on key issues; *and be it further*

RESOLVED, That the intercarrier compensation reform proposal that NARUC might ultimately endorse should adhere to the policy principles adopted on May 5, 2004, to the extent possible, and should seek support among all industry, consumer, and governmental stakeholders; *and be it further*

RESOLVED, That NARUC's General Counsel shall file comments at the FCC to that effect.

Sponsored by the Telecommunications Committee
Adopted by the NARUC Board of Directors February 16, 2005

Appendix C

THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS STUDY COMMITTEE ON INTERCARRIER COMPENSATION GOALS FOR A NEW INTERCARRIER COMPENSATION SYSTEM

May 5, 2004

I. INTRODUCTION:

Portions of the current intercarrier compensation system are rapidly becoming unsustainable. There is disagreement among stakeholders over the appropriate solutions. Various industry groups have been working separately to develop intercarrier compensation proposals. The proposals are reportedly designed to replace some or all of the existing intercarrier compensation mechanisms, and are expected to be submitted to the FCC. "Intercarrier compensation" controls how various carriers compensate one another for handling calls or for leasing dedicated circuits. "Reciprocal compensation," the fee for handling local traffic, has increasingly flowed from the Incumbent Local Exchange Carriers ("ILECs")[3] to the CLECs by virtue of such developments as CLECs terminating an increasing share of ISP traffic. "Access charges" are intercarrier fees for handling toll traffic. "Long distance" or toll compensation between carriers existed for decades under the old AT&T Bell System monopoly, and it supported a portion of the cost of common wires and facilities. Following divestiture, "access charges" were created for toll traffic. The emergence of new communications technologies has placed stress on the current compensation system. Because it was assembled piecemeal over time, the current intercarrier compensation system has inconsistencies that can result in discriminatory practices, arbitrage or "gaming" of the current system, and other unintended outcomes. In hopes of leading to a balanced solution, a group of the NARUC's commissioners and staff has drafted this set of guiding principles against which the various proposals can be measured and evaluated. These principles address the design and functioning of, and the prerequisites to, a new intercarrier compensation plan. They do not address the amount or appropriateness of costs recovered by particular carriers through intercarrier compensation.

II. APPLICABILITY:

A. An integrated intercarrier compensation plan should encompass rates for interconnecting CLEC and ILEC local traffic as well as access charges paid by interexchange carriers.

B. CLECs, IXCs, ISPs, VoIP, wireless, and any other companies exchanging traffic over the Public Switched Telecommunications Network should be covered ("Covered Entities").

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[3] A "local exchange carrier" is defined generally by the Telecommunications At of 1996 as any entity engaged in the provision of telephone exchange service or exchange access. In this document, it refers to both the traditional local providers of wire-line telephone service, referenced as the Incumbent Local Exchange Carriers or ILECs, and their competitors/any competing service, referenced in this document as Competing Local Exchange Carriers or CLECs.

C. No Covered Entity should be entitled to purchase a service or function at local rates as a substitute for paying intercarrier compensation.

III. ECONOMICALLY SOUND:

A. The compensation plan should minimize arbitrage opportunities and be resistant to gaming.

B. Intercarrier compensation should be designed to recover an appropriate portion of the requested carrier's [4] applicable network costs. At a minimum, this will require compliance with the jurisdictional separations and cost allocation rules, applicable case law in effect at any point in time, and 47 U.S.C. §254(k).

C. A carrier that provides a particular service or function should charge the same amount to all Covered Entities to whom the service or function is being provided. Charges should not discriminate among carriers based on:
1. the classification of the requesting carrier;[5]
2. the classification of the requesting carrier's customers;
3. the location of the requesting carrier's customer;
4. the geographic location of any of the end-users who are parties to the communication; or,
5. the architecture or protocols of the requested carrier's network or equipment.

D. Intercarrier compensation charges should be competitively and technologically neutral and reflect underlying economic cost.

E. The intercarrier compensation system should encourage competition by ensuring that requested carriers have an economic incentive to interconnect, to carry the traffic, and to provide high-quality service to requesting carriers. In limited circumstances, carriers may voluntarily enter into a bill and keep arrangement.

F. Volume of use should be considered when setting intercarrier compensation rates. Available capacity may be used as a surrogate for volume of use.

G. Any intercarrier compensation system should be simple and inexpensive to administer.

IV. **COMPETITIVE INTERCARRIER MARKETS NOT PRICE-REGULATED:**

Market-based rates should be used where the market is determined to be competitive. A rigorous definition of "competitive market" is needed in order to prevent abuses.[6]

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[4] "Requested carrier" means a carrier that receives a request for telecommunications service. An example would be a LEC that receives traffic for termination on the loop of one of the LEC's customers.

[5] "Requesting carrier" means a carrier that requests another carrier to transport, switch, or process its traffic.

V. NON-COMPETITIVE INTERCARRIER MARKETS PRICE-REGULATED:

A. An intercarrier compensation system should ensure that telecommunications providers have an opportunity to earn a reasonable return and that they maintain high-quality service. It should also encourage innovation and promote development of competitive markets.

B. Government should limit the ability of carriers with market power to impose excessive charges.

C. Where charges are restricted by government action, carriers have the protections of due process, and confiscation is not permitted.

D. If any ILEC property or operations in the future could give rise to a confiscation claim, in a rate case or otherwise, then a practical way should be defined to exclude property and operations that are in competitive markets.

VI. APPROPRIATE FEDERALISM:

A. The reciprocal compensation system should ensure that revenues, cost assignment, and the risk of confiscation are jurisdictionally consistent for all classes of traffic.

B. State commissions should continue to have a significant role in establishing rates and protecting and communicating with consumers.

C. To avoid creating harmful economic incentives to de-average toll rates by some interexchange carriers, the FCC should have the authority to pool costs within its defined jurisdiction whenever intercarrier compensation rates are high in some areas.

D. State commissions should retain a role in this process reflecting their unique insights, as well as substantial discretion in developing retail rates for services provided by providers of last resort, whether a dual or unified compensation solution is adopted.

E. A proposal preserving a significant State role that fits within the confines of existing law is preferable.

VII. UNIVERSAL SERVICE AND CONSUMER PROTECTION:

A. The transition to a new intercarrier compensation system should ensure continuity of existing services and prevent significant rate shock to end-users. Penetration rates for basic service should not be jeopardized.

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[6] Markets that have been competitive can become non-competitive, requiring the re-imposition of regulation to protect consumers.

B. A new intercarrier compensation system should recognize that areas served by some rural local exchange carriers are significantly more difficult to serve and have much higher costs than other areas.

C. Rural customers should continue to have rates comparable to those paid by urban customers. End-user basic local exchange rates should not be increased above just, reasonable, and affordable levels.

D. Any intercarrier compensation plan should be designed to minimize the cost impact on both federal and State universal service support programs.

VIII. ACHIEVABILITY AND DURABILITY:

A new intercarrier compensation system should not only recognize existing circumstances but should also anticipate changes at least over the intermediate term, and should provide solutions that are appropriately resilient in the face of change.

IX. PREREQUISITES FOR PLAN IMPLEMENTATION:

A. The estimated cost impact on a carrier-by-carrier basis, by State, must be computed before a decision is made whether to adopt a new intercarrier compensation plan.

B. The FCC should identify, quantify, and evaluate the total of all federal high cost universal service fund payments received by each company today. The federal universal service support mechanisms should be revisited as an intercarrier compensation plan is implemented to ensure that telecommunications services remain accessible and affordable to all Americans.

C. The FCC should be required to regularly revisit its cost allocation rules for regulated/nonregulated services. Costs that should not be recovered through regulated rates ought to be excluded from the computation of intercarrier compensation rates.

D. Before any new intercarrier compensation plan is implemented, the effect of the plan on local exchange rates, including both interstate and intrastate SLCs, should be computed.

E. Even when a referral to a Joint Board is not mandated by law, in order to ensure State input the FCC should make a referral, and the Joint Board should act on that referral, in an expedited manner. Similarly, referrals to Joint Conferences should be handled on an expedited basis.